



**THE ATTORNEY GENERAL
OF TEXAS**

December 29, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Honorable James Warren Smith
Frio County Attorney
P. O. Box V
Pearsall, Texas 78061-1138

LO-88-138

Dear Mr. Smith:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J I M M A T T O X
Attorney General of Texas

JAM/bc
Enclosure



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December 29, 1988

Honorable James Warren Smith
Frio County Attorney
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Dear Mr. Smith:

You ask whether the Frio County Commissioners Court may institute a new pay schedule for county employees that would include the employees in the county attorney's office. You also ask whether a salary schedule set by the commissioners court that includes salaries in the county attorneys office is violative of section 41.106 of the Government Code.

Section 41.106 of the Government Code (formerly article 332a, V.T.C.S.), provides:

(a) A prosecuting attorney shall fix the salaries of his assistant prosecuting attorneys, investigators, secretaries, and other office personnel, subject to the approval of the commissioners court of the county or counties composing the district.

Section 41.101 of the Government Code defines "prosecuting attorney" as "a county attorney, district attorney, or criminal district attorney."

Chapter 152 of the Local Government Code (previously codified as article 3912k, V.T.C.S.) governs the compensation, expenses, and allowances of county officers and employees. The chapter gives the commissioners court the authority to set the amount and type of compensation received by the employees falling within the reach of the chapter. But the chapter does not govern the employees of a district attorney, county attorney, or criminal district attorney. See Attorney General Opinions JM-910 (1988); H-908 (1976); H-656 (1975). The employees of the three types of prosecuting attorneys fall under the provisions of chapter 41 of the Government Code (previously codified as

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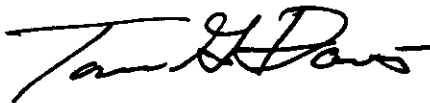
article 332a, V.T.C.S.). See Attorney General Opinions JM-910 (1988); H-922 (1977); H-908 (1976).

In Attorney General Opinion H-922, supra, this office concluded that article 332a, V.T.C.S., confers authority on a commissioners court only to approve or disapprove the compensation set by a county attorney; the authority to set the actual compensation rests with the prosecuting attorney:

In Attorney General Opinion H-908 (1976), we held that a commissioners court was authorized to refuse approval of salaries proposed by a prosecuting attorney pursuant to article 332a. We indicated, however, that the prosecuting attorney was responsible for initially setting the salaries. In our opinion, while the commissioners court may reject any salary proposal submitted by a prosecuting attorney, it may not itself fix that salary.

Therefore, we conclude that a commissioners court has no authority to adopt a salary schedule applicable to the employees of the county attorney. The commissioners court may only approve or disapprove any such amount of compensation set by the prosecuting attorney.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

TGD/SW/bc

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